marriage because by *the law of their faith* the second marriage was invalid (see *Re Ram Kumari* (12)). Such cases support the argument of the respondent and not that of the appellant.

It appears to their Lordships that as regards India the law is stated with complete accuracy in *Datta* v. *Sen.* (13) That was a succession case but the question for decision was whether an Indian Christian who became converted to Mahomedanism could take a second wife. Henderson J. said at p. 16:

"In connection with marriage the personal law must be applied. In the case of *Advocate-General of Bombay* v. *Jimababai* (14) 196, Beaman J. said this:—

'On conversion to Mahomedanism, converts, no matter what their previous religion may have been, must be taken at that moment to have renounced all their former religious and personal law in so far as the latter flowed from and was inextricably bound up with their religion and to have substituted for it the religion of Mahomed with so much of the personal law as necessarily flows from that religion.'

After his conversion Dukhiram was governed by the Mahomedan law. There can be no question that under that law he was entitled to contract a valid marriage with Alfatanessa. It would, therefore, be a serious thing to say that such a union was a mere adulterous connection.

In our view, as he was entitled to contract this marriage under the Mahomedan law, it must be held to be a valid marriage unless there is some statute which invalidates it. Mr. Sen was not able to put forward any such provision: nor can we find anything either in Act XV of 1872 or in the Indian Divorce Act which would expressly invalidate this marriage. The result is that, in our opinion, Dukhiram did contract a valid marriage with Alfatanessa."

Such authority is entitled to great weight particularly in questions of the validity of marriages celebrated in accordance with the laws of the country where it is celebrated, but does not bind their Lordships, who have to consider this matter for the first time as a matter of decision.

Ceylon is a country of many races, many creeds and has a number of Marriage Ordinances and Acts. The position there, as it appears to their Lordships, is similar to that in the former territories of British India where as was pointed out by Chagla J. in *Khanum* v. *Irani* (15) "in matrimonial matters there is no one law which applies to persons domiciled in British India; they are governed by their personal laws which differ from community to community."

Their Lordships also note with interest the recent observations of Sir Jocelyn Simon P. in *Cheni* v. *Cheni* (16) who said "After all there are no marriages which are not potentially polygamous in the sense that they may be rendered so by a change of domicile and religion on the part of the spouses", which recognises that the obligations assumed upon undertaking a Christian monogamous marriage may not in some circumstances be incapable of change.

Whatever may be the situation in a purely Christian country (as to which their Lordships express no opinion) they cannot agree that in a country such as Ceylon a Christian monogamous marriage prohibits for all time during the subsistence of that marriage a change of faith and of personal law on the part of a husband resident and domiciled there. They agree with the observations of Innes J. almost 100 years ago. In their Lordships' view in such countries there must be an inherent right in the inhabitants domiciled there to change their religion and personal law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier marriage. If such inherent right is to be abrogated it must be done by statute. Admittedly there is none.

Their Lordships have not overlooked section 35 of the Marriage Registration Ordinance which tends to support Mr. Littman's argument, but the exhortation contained in the registrar's address is no more than a warning and though it may be apt to mislead the ordinary man or woman ignorant of the definition of marriage contained in section 64, it cannot successfully be prayed in aid when considering whether the offence of bigamy has been committed in terms of section 362B of the Penal Code.

It follows that as the Attorney General of Ceylon cannot establish that this second marriage was void by the law of Ceylon by reason of the earlier Christian monogamous marriage the appeal must fail.

For these reasons their Lordships have humbly advised Her Majesty to dismiss the appeal.

Appeal dismissed.

Solicitors: *T. L. Wilson & Co.; Hatchett Jones & Co.*

DAMU JADHAO v. PARAS NATH SINGH

[O.C.J. (Ambrose J.) February 19, 1965]

[Singapore — Suit No. 1153 of 1962]

Moneylending — Promissory note — Unstamped — Inadmissible in evidence — Stamp Ordinance (Cap. 170), ss. 2, 4, 46 and 51.

Evidence — Agreement in writing — Evidence Ordinance (Cap. 4) s. 92 — Applicable only where all terms of contract reduced to form of a document.

The plaintiff brought an action against the defendant to recover a sum of $2,500 alleged to have been lent by the plaintiff to the defendant and to be payable under an agreement in writing signed by the defendant.

Held: (1) the written agreement was a promissory note, and as it was not duly stamped and could not be stamped after execution under section 46 of the Stamp Ordinance, it was inadmissible in evidence and could not be acted upon by the court under section 51 of the Stamp Ordinance;

(2) section 92 of the Evidence Ordinance did not apply and evidence other than the document could be given in proof of the terms of the alleged contract as it was impossible to say that all the terms of the alleged contract had been embodied in the document;

(3) on the evidence the plaintiff failed to prove the loan of the sum to the defendant.

[**Editorial Note:** The plaintiff appealed against this decision and the appeal was dismissed. The judgment of the Federal Court will be reported in due course.]

Cases referred to:—

(1) *Chop Tiong Kok Hang* v. *Hock Cheong & Co.* [1934] M.L.J. 74.

(2) *Sheo Nath Prasad* v. *Sarju Nonia* I.L.R. 1943 All. 610.

(3) *Perumal Chettiar* v. *Kamakshi Ammal* I.L.R. 1938 Mad. 933.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

K. K. Bezboruah for the defendant.

Ambrose J.: This action was brought to recover a sum of $2,500 alleged to have been lent by the plaintiff to the defendant and to be payable under an agreement in writing signed by the defendant on the 14th June, 1962.

One of the defences pleaded was that the written agreement was a promissory note which was inadmissible in evidence, void and unenforceable, because it was not duly stamped. I found that the document was a promissory note within the definition contained in section 2 of the Stamp Ordinance. According to that definition, "promissory note" includes any document or writing, except a bank note, containing a promise to pay any sum of money. Under section 4(1)(a) of the Ordinance the document was chargeable with stamp duty amounting to $1.25 under Articles 13 and 49 of Schedule A to the Ordinance. Section 7(2) of the Ordinance required the duty chargeable to be paid and denoted by impressed stamps. The document was stamped with adhesive stamps of the value of 50 cts. and not with impressed stamps of the value of $1.25. Under section 40 of the Ordinance the document had to be stamped before execution as it was executed in Singapore, unless it could be stamped after execution under section 46 of the Ordinance. Section 46 of the Ordinance provides for stamping of instruments after execution as follows:

"Save where other express provision is made by this or any other Ordinance, any unstamped or insufficiently stamped instrument may be stamped after the first execution thereof, subject as follows:—

(a) where the instrument, not being a bill of exchange or cheque or promissory note, drawn or made within the Colony, is stamped within fourteen days after it has been first executed in the Colony, or, if first executed out of the Colony within thirty days after it has been first received in the Colony, on payment of the duty only;

(b) when the instrument is stamped within three months after such execution or receipt as aforesaid, on payment in addition to the stamp duty of a penalty of ten dollars or of the amount of deficient duty, whichever penalty is greater;

(c) when the instrument is not stamped within three months after such execution or receipt as aforesaid, on payment in addition to the stamp duty of a penalty of twenty-five dollars or of four times the amount of deficient duty, whichever penalty is greater."

In my opinion, the word "instrument" in paragraphs (b) and (c) of section 46 has the same meaning as the word "instrument" in paragraph (a) and does not include "a bill of exchange or cheque or promissory note drawn or made within the Colony". This opinion is supported by the view expressed by Huggard C.J. in *Chop Tiong Kok Hang* v. *Hock Cheong & Co.*,(1) at p. 76. It seemed to me, therefore, that the document in question could not be stamped after execution under the provisions of section 46. I accordingly came to the conclusion that the document was not duly stamped under the provisions of the Stamp Ordinance referred to above. Section 51 of the Ordinance provides as follows:

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person or by any public officer unless such instrument is duly stamped."

I ruled, therefore, that the document was not admissible in evidence and could not be acted upon by the court.

Counsel for the defendant submitted that under section 92 of the Evidence Ordinance no evidence other than the document could be given in proof of the terms of the alleged contract of loan. This section provides as follows:

"When the terms of a contract . . . have been reduced by or by consent of the parties to the form of a document, . . . no evidence shall be given in proof of the terms of such contract, . . . except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

In my view section 92 applies only when all the terms of the contract have been reduced by or by consent of the parties to the form of a document. Support for this view is to be found in *Sheo Nath Prasad* v. *Sarju Nonia*,(2) and *Perumal Chettiar* v. *Kamakshi Ammal*.(3) One of the terms of the alleged contract was the consideration for the defendant's promise to pay $2,500. On looking at the document and the pleadings I found that it was impossible to say that all the terms of the alleged contract had been embodied in the document. I ruled therefore that section 92 of the Evidence Ordinance did not apply and that evidence other than the document could be given in proof of the terms of the alleged contract.

The plaintiff then amended the statement of claim with the leave of the court by deleting the

words "payable under an agreement in writing signed by the defendant on the 14th June 1962". The particulars given in the statement of claim read as follows:

"Particulars

14.6.1962. Amount lent $2,500."

And the defendant amended the defence with the leave of the court by deleting paragraphs 2 and 3. The remaining issue was, therefore, whether the plaintiff lent the defendant $2,500 on the 14th June, 1962.

The plaintiff's evidence was as follows. He was a milk-seller. From 1961, he was living at 382-K, Changi Road, 8½ milestone, Singapore. On the 14th June, 1962, at about 3.30 p.m., the defendant, whom he had known from 1956 or 1957 came to his house with another Indian. The defendant prostrated himself and begged the plaintiff to lend him $2,500. The defendant said that he needed the money to pay it to someone else, who would seize his cattle if the defendant did not pay the money. The plaintiff at first refused the request. The defendant kept on begging him and said that, if the plaintiff did not give him the money, he would not go away and would die. The defendant promised to repay the sum in two weeks' time and said he was prepared to make out a document as proof. The plaintiff finally agreed to lend the money and paid the defendant $2,500 in cash in the presence of the defendant's companion and the plaintiff's wife, Bibi Hamidah. The defendant told the plaintiff to prepare the document. The plaintiff replied that he did not know how to write Hindi. The defendant then left with his companion to attend to some work, promising to return later and then go with the plaintiff to a person who could write out the document in Hindi. The defendant returned alone about 6 p.m. the same day. Both parties went to the house of the plaintiff's father-in-law, Gopi Chand, at 6¼ milstone, Changi Road. The defendant asked Gopi Chand to write out a document and said, "I have borrowed $2,500 from Damu Jadhao. That document will remain as proof of the loan. Damu Jadhao could demand repayment when he desires". Gopi Chand replied that he did not know how to write such a document. The three then went, at the defendant's suggestion, to the house of Subedhar Singh at Telok Kurau. The defendant said to Subedhar Singh, "I have taken $2,500 from Damu Jadhao. Please draw up a document for that amount so that it can be of use at the proper time". All four then went to Jhagar Misra's house which was opposite Subedhar Singh's. There a document was drawn up, read out and explained by Subedhar Singh. The defendant said it was correct. The defendant signed the document first. Gopi Chand, Subedhar Singh, Mohamed Zikar Khan and Jhagar Misra signed the document as witnesses.

The defendant's evidence was as follows. He was a cattle-owner and milk-seller. He was living at 8½ milestone, Changi Road, Singapore. He had known the plaintiff from 1959 or 1960. On the 14th June, 1962 about 4 p.m. he was in his cowshed. Three Tamils approached him. One of them was wearing a uniform. They asked him whether he had any cow-dung. He said he did not sell cow-dung. They asked him what was in a parcel which was in a flower-pot near his cowshed. He replied that he had just returned to his house and did not know what it was. They told him it was ganja (Indian hemp) and slapped him. The plaintiff then turned up and went some distance away with the three Tamils. Then the four returned and told the defendant that he should give them $2,500 or sign a note to the effect that he owed them $2,500. The defendant refused to do so. The Tamils beat him up again. The plaintiff said to the defendant that the defendant was not married and asked him what he wanted the cattle for. The Tamils told him they would kill him if he was not prepared to sign a note. The plaintiff told him to sign a note. He agreed to do so because he was frightened. All five of them went in a car to the 6th milestone, Changi Road. There Gopi Chand, the plaintiff's father-in-law, told the defendant to sign a promissory note, as otherwise he would be sent to jail. Gopi Chand said the plaintiff would pay some money to the customs officers. Then all of them proceeded to Subedhar Singh's house at Telok Kurau. On the way the plaintiff hit the defendant on the head and warned him not to make any noise. When they reached Subedhar Singh's house, the three Tamils remained outside the house and went away when Subedhar Singh came. The defendant told Subedhar Singh that he was arrested for possession of ganja and that the plaintiff had agreed to get him out of trouble. The defendant requested Subedhar Singh to prepare a note and to write that the plaintiff would give $2,500 to the customs officers to set him free. A document was prepared by Subedhar Singh and the defendant signed it, because he was in fear as he had been threatened with death.

I did not believe the plaintiff's story that he lent $2,500 to the defendant on the 14th June, 1962. It seemed to me incredible that, if the plaintiff agreed to lend the defendant $2,500 in cash and if the defendant agreed to execute a promissory note for that amount, the plaintiff would have paid the money to the defendant and allowed him to go away without executing the promissory note. Furthermore, according to the plaintiff's evidence in cross-examination, he sold

nine head of cattle to a butcher for $3,600 on the 7th June, 1962; and he paid $1,100 into the Post Office Savings Bank on the 12th June, 1962. At first he said that that sum of $1,100 was the balance of proceeds of sale of the nine head of cattle. Later he changed his story and said that the sum of $1,100 paid into the Post Office Savings Bank was money made by him in May, 1962, and had no connection with the $3,600 realized on the 7th June, 1962. In view of this contradiction, I found it hard to believe him. It seemed to me that the sum of $1,100 paid by him into the Post Office Savings Bank on the 12th June, 1962, was, most probably, the balance of the proceeds of sale of cattle sold on the 7th June, 1962; and that, therefore, he could not have had any part of the proceeds of sale in his house on the 14th June. In my opinion, if the plaintiff had sold nine head of cattle for $3,600 on the 7th June, 1962, he would have paid the whole of that sum into his account with the United Commercial Bank or his account with the Post Office Savings Bank, which was in his wife's name, and he would not have kept such a large sum of money at home.

The plaintiff's wife, Bibi Hamidah, testified that nine head of cattle were sold for $3,600 about a week before the loan of $2,500 was made to the defendant; that the money was kept in an almeirah in the plaintiff's house; that she took out $2,500 from this sum of $3,600 and gave it to the plaintiff on the 14th June, 1962; that the plaintiff lent the money to the defendant on that day; and that she told the defendant to count the money again. I rejected the evidence of the plaintiff's wife as she was not an impartial witness. I also rejected it as I took the view that the $1,100 which was paid into the Post Office Savings Bank on the 12th June, 1962, was the balance of proceeds of sale of cattle sold on the 7th June, 1962, and, therefore, that no part of the proceeds of that sale could have been in the plaintiff's house on the 14th June, 1962.

Mohamed Zikar Khan had this to say: he worked as a motor-car driver for the plaintiff from March to August, 1962; about 5.30 p.m. on the 14th June, 1962, he returned to the plaintiff's house; there he saw the defendant seated with a Tamil; the plaintiff's wife brought a large bundle of $10 and $50 notes and put the money on the table; the defendant counted the money and handed it to the Tamil who put it in a leather bag. The facial expression of Zikar Khan as he gave evidence plainly indicated to me that he was not telling the truth. A further ground for rejecting his evidence was this. The plaintiff did not say in his examination-in-chief that Zikar Khan was present when the sum of $2,500 was paid to the defendant: he mentioned this for the first time in his cross-examination about seven months later.

The plaintiff relied on certain alleged admissions by the defendant that he had borrowed $2,500 from the plaintiff. Evidence as to one such admission was given by Zikar Khan. He testified that the admission was made by the defendant at the house of Jhagar Misra at 7.30 p.m. on the 14th June, 1962. I rejected this evidence as Zikar Khan impressed me unfavourably.

The plaintiff's father-in-law, Gopi Chand, deposed that the defendant admitted to Subedhar Singh at the time of the execution of the document that he borrowed $2,500. I rejected this evidence as Gopi Chand's facial expression, while he was giving evidence, indicated quite clearly that he was not telling the truth.

Jhagar Misra testified that he asked Subedhar Singh what he was writing, while the latter was writing the document at Jhagar Misra's house, and that Subedhar Singh replied that the defendant had borrowed $2,500. Subedhar Singh was not called as a witness by the plaintiff. I rejected Jhagar Misra's evidence as it was hearsay.

I accepted the defendant's evidence that he did not borrow $2,500 from the plaintiff; and that he signed the promissory note because he was intimidated. Counsel for the plaintiff asked me not to believe the defendant's evidence for the reason that in his report to the police on the 15th June, 1962, the defendant did not say that he signed the promissory note because he was intimidated. The report was as follows:

> "On 14.6.62 at about 8.30 p.m. I was taken to a friend's house at No. Jalan Eunus named Subaidar Singh. There I made out a promissory note of $2,500 and I wanted to borrow this sum of money from Darmu Jadoh for a case. I agreed to pay in August. I did not want to borrow the money now and I feared that this Darmu Jadoh might ask me to pay the money as he is holding the promissory note. That is all."

The defendant, however, made another report on the 23rd June, 1962, which gave details of the circumstances in which he came to sign the promissory note. It seemed to me that the defendant did not supply these details in his first report because he did not want to mention anything about the Indian hemp (ganja).

It was for the above reasons that I decided that the plaintiff did not lend the defendant $2,500 on the 14th June, 1962, and gave judgment for the defendant with costs.

Judgment for the defendant.

Solicitors: *N. A. Christopher; K. K. Bezboruah.*